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No. 07-429

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

KATINA KEFALOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR REHEARING OF ORDER DENYING PETITION

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GROUNDS FOR REHEARING

On November 5, 2007, this Court denied the Petition for Writ of Certiorari filed herein by Katina Kefalos. On that same date this Court granted certiorari in *Arave v. Hoffman*, No. 07-110.

The Kefalos case provides an excellent companion case to Arave:

(a) Hoffman did not receive effective assistance of counsel in the plea bargain phase of pretrial proceedings. Its effect was evaluated under *Strickland v. Washington*, 466 U.S. 668 (1984).

(b) Kefalos was denied counsel in pretrial proceedings which led to a finding she had waived her right to counsel by a course of conduct. This presents two related questions:

> (1) Should Kefalos have been provided counsel to assist her in controverting assertions of a course of conduct justifying a finding of waiver of the right to counsel? And if so,
>
> (2) Should the denial of counsel be evaluated under *Strickland v. Washington*, supra, or *United States v. Cronic*, 466 U.S. 648 (1984) and *Neder v. United States*, 527 U.S. 1 (1963), i.e., prejudice shown v. prejudice presumed.

In effect, Kefalos was denied the assistance of counsel during the proceeding in which the district court determined she had waived the right to counsel by her conduct.

Hoffman rejected a plea bargain because of the negligent advice of his attorney, which conduct was deemed to be ineffective assistance of counsel.

Kefalos was denied counsel because her attorney had a conflict of interest and presented no defense to assertions of waiver. To the contrary counsel for Kefalos encouraged a finding of waiver because he knew he would only be allowed to withdraw if a waiver was found.

Hoffman was convicted after a fair trial in which he was represented by a competent attorney.

Kefalos was convicted after a trial in which she incompetently represented herself.

Unlike Hoffman, at no stage in the proceedings has Kefalos been given a hearing on this issue which is critical to right to counsel jurisprudence. Her writ of habeas corpus was denied by a district judge who was unquestionably disqualified from hearing the matter. The Court of Appeals refused to grant her a certificate of appealability.

WHEREFORE, it is respectfully requested that this Honorable Court reconsider its denial of Kefalos' petition for writ of certiorari. Upon reconsideration, this Honorable Court is urged to take the Kefalos case along with the Arave case in order to add to and

clarify the jurisprudence of the right to counsel in pretrial proceedings.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH

I hereby certify that this petition for rehearing is restricted to the grounds set forth in Rule 44.2 of the Supreme Court Rules in that the grant of certiorari in *Arave v. Hoffman*, No. 07-110 constitutes intervening circumstances of a substantial or controlling effect and is presented in good faith and not for the purpose of delay. In *Arave*, though not raised in the petition, this Court requested briefs regarding whether Hoffman's conviction in a fair trial should have any effect on his remedy. This facet brings into play the relative application of *Strickland v. Washington*, 466 U.S. 668 (1984), *United States v. Cronic*, 466 U.S. 668 (1984) and *Neder v. United States*, 527 U.S. 1 (1963).

Brice A. Tondre